

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JOSEPH SMITH,

Plaintiff,

v.

ORDER

CAPITAL ONE BANK USA, N.A. and  
MESSERLI & KRAMER, P.A.,

16-cv-12-jdp

Defendants.

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Plaintiff Joseph Smith alleges violations of the Wisconsin Consumer Act and violations of due process pursuant to 42 U.S.C. § 1983 (framed as violations of the Commerce Clause and the Full Faith and Credit Clause), in connection with defendants' efforts to garnish plaintiff's wages following plaintiff's failure to pay credit card debt.<sup>1</sup> Defendants filed motions to dismiss in response to plaintiff's amended complaint. Dkt. 10 and Dkt. 12.

Now plaintiff moves to strike portions of defendants' reply briefs in support of their respective motions to dismiss. Dkt. 23 and Dkt. 25. Plaintiff moves to strike footnote 12 from defendant Capital One Bank USA, N.A.'s reply brief and pages 17-18 from defendant Messerli & Kramer, P.A.'s reply brief because each section offers new legal arguments not presented in the parties' opening briefs.

I will deny plaintiff's motions. Rather than delve into the merits of defendants' motions to dismiss and the arguments defendants have raised, the court will simply reassure plaintiff that legal arguments raised for the first time in a reply brief are generally waived.

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<sup>1</sup> Plaintiff's amended complaint also references the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k, but plaintiff does not appear to allege any violations of the FDCPA.

*Mendez v. Perla Dental*, 646 F.3d 420, 423-24 (7th Cir. 2011) (“[I]t is well-established that arguments raised for the first time in the reply brief are waived[.]” (citing *United States v. Dabney*, 498 F.3d 455, 460 (7th Cir. 2007); *United States v. Blaylock*, 413 F.3d 616, 619 (7th Cir. 2005))).

ORDER

IT IS ORDERED that plaintiff Joseph Smith’s motions to strike, Dkt. 23 and Dkt. 25, are DENIED.

Entered April 12, 2016.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge